Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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CASE AND COMMENT

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A Surprising Criticism.

Under the heading, "What Are Navigable Waters?" the leading editorial in the Central Law Journal of October 23 attributes to CASE AND COMMENT a "gross error" in the publication of its recent editorial entitled, "A Misleading Opinion," which criticises some language of the opinion of Mr. Justice Field in the case of Illinois C. R. Co. v. Illinois, 146 U. S. 387, 36 L. ed. 1018, 13 Sup. Ct. Rep. 110. It is surprising in several particulars. First, the CASE AND COMMENT article was a criticism of the language of the opinion as to the common-law doctrine of the ownership of lands under navigable waters. The Law Journal article is on the question, "What Are Navigable Waters?" It is unnecessary to point out the difference in these questions. Second, the Central Law Journal assumes to quote from CASE AND COMMENT the statement that the decision tends "to confuse the law on the subject of navigable waters," but in so doing, by some strange mistake, it interpolates the words "of navigable waters." Those words do not appear in the CASE AND COMMENT article, and their use makes a misquotation, because the subject in hand was not navigable waters, but the ownership of their bed. Third, the Central Law Journal, after charging upon us a "gross error," and then quoting the language of the opinion which CASE AND COMMENT criticised, proceeds to give what it calls an abridgment of the law on the subject of navigable waters. It shows that the law as to the ownership of lands under navigable waters differs in different states, and quotes from an English opinion by Lord Denman, that, "up to the point reached by the flow of the tide, the soil was in the Crown." This is the substance of all that it says on this subject, and this is exactly in harmony with what CASE AND COMMENT said. This quotation from Lord Denman certainly sustains, rather than contradicts, the criticism of Mr. Justice Field's language, to the effect that at common law the Crown ownership of lands under navigable waters "is not founded upon the existence of the tide over the lands."

The essence, therefore, of the Central Law Journal's criticism of CASE AND COMMENT consists in attributing to it by general words a "gross error." All the authorities it cites support what CASE AND COMMENT said. Some confusion in the mind of the editor of the Central Law Journal seems to exist as to the distinction between the question of navigability of waters and that of the ownership of their bed. The questions are entirely distinct.

Religious Garb in Public Schools.

Some contention is aroused in the state of New York by a decision of the superintendent of public instruction that religious garb cannot be worn by teachers in public schools during school hours. A clergyman makes a

strenuous attack on this decision by an article in the New York Sun, in which he speaks of it as a measure to decitizenize fellow citizens, and declares that the superintendent of public instruction is outside of his province when he undertakes to abbreviate the rights and curtail the liberties of citizens. A question somewhat similar arose in Pennsylvania several years since, and was decided in Hysong *v.* Gallitzin Borough School Dist. (Pa.) 26 L. R. A. 203. It was there held that the employment, as teachers in the public schools, of sisters of Saint Joseph, who wore in school the distinctive sectarian garb, crucifixes, and rosaries of their order, was not a violation of the law or an abuse of discretion which the courts could control, and that this situation was not changed by the fact that the teachers contributed all their earnings, beyond their support, to the treasury of their order for religious purposes. In Pennsylvania the case arose by a suit for an injunction to restrain the school board from continuing the employment of such teachers, and there had been no rule by the school authorities against the wearing of such garb and emblems by the teachers. It was rather an attempt by individual citizens to override the judgment and discretion of the school board, and it was on the ground that they were violating the provisions of the Pennsylvania Constitution guaranteeing equal rights of conscience, and prohibiting preference by law to religious establishments or modes of worship and the use of public money for sectarian schools. The case was an extreme one in the fact that the sisters employed were such as were detailed to that duty by their mother superior, and performed their services as part of their religious duties. It is important to note, however, that the opinion of the court sustaining the lawfulness of the employment of these teachers declared: "In this matter was involved solely the exercise of discretion by the school board in the performance of an official duty for which they alone are responsible. This discretion, when it does not transgress the law, is not reviewable by this, or by any other, court." A strong dissenting opinion was filed.

In New York the right of the superintendent of public instruction to pass upon the question is not likely to be contested, except by ecclesiastics. Hutchinson *v.* Skinner, 21 Misc. 729, sufficiently sustains this statement, if any authority upon it is needed. The conclusiveness of his decision is another matter. If the question comes before the courts of New York, it will receive great attention as a matter of fundamental and far-reaching importance.

Admiralty Jurisdiction of State Canals.

At the very moment when the people of the state of New York were at the height of their discussion of a constitutional amendment authorizing an extensive enlargement of the Erie canal, at a vast cost to the people of the state, the United States Supreme Court handed down the decision of Perry *v.* Haines, Adv. S. U. S. —, holding that the Erie canal, though lying wholly within the state of New York, is a navigable water of the United States, because it forms a continuous highway for interstate and foreign commerce by connecting Lake Erie with the Hudson river. The question arose in a suit in a state court to enforce a lien given by state statute for repairs to a canal boat, and provided for enforcing the lien by proceedings *in rem*. The repairs were made in dry dock at a small village in the state of New York, on the line of the canal. The boat at the time was on a trip from New York to Buffalo. The repairs amounted to only $154.40, and the boat, when thus repaired, sold for only $155. In the state court the defendant contended that, as the Erie canal was used for interstate and foreign commerce, it was navigable water of the United States, and that the admiralty courts of the United States had exclusive jurisdiction of any suit *in rem* to enforce a lien upon any vessel engaged in commerce on that canal, though its trips were entirely confined to the state of New York. This contention was denied in the state court, and the decision was affirmed by the appellate division of the supreme court, and again by the court of appeals of the state. But, on writ of error from the Supreme Court of the United States, the decision was reversed, and the doctrine established that the Erie canal is as much within the admiralty jurisdiction of the United States as if it were a natural water course. Mr. Justice Brown writes the opinion of the court, while Justices Brewer, Harlan, Peckham, and the Chief Justice dissent. It is thus, like most other epoch-making or far-reaching decisions of

that court, decided by a majority of one. In the prevailing opinion it is declared that the only distinction between canals and other navigable waters is that they are rendered navigable by artificial means, and sometimes, though by no means always, they are wholly within the jurisdiction of a particular state. But a majority of the court declared that they cannot see that this creates any distinction in principle.

The logical and necessary results of this decision may be of considerable importance in several directions. If the Erie canal is navigable water of the United States, all the Federal laws as to inspection and license of vessels may be made applicable to craft on this canal. In fact the provisions of the existing statutes are sufficient to include the inspection of the hulls of such vessels, and the extent to which such inspection and license may go is in the discretion of Congress. Another result is in respect to the inland lakes or rivers in New York state which can be reached through the Erie canal by craft from other states or countries. Several inland bodies of water are thus accessible to boats from other states through the Erie canal, and all the laws of Congress governing navigation and vessels on navigable waters of the United States seem to be applicable to these inland lakes reached through the canal. We do not understand that the Federal laws on this subject have hitherto been applied to these inland lakes, but it does not seem possible to exclude them from the operation of these Federal laws if the Erie canal is itself navigable water of the United States, and through that these bodies of water are reached by navigation from other states and countries.

Liability for Breaking Electric Wires.

The rights of the owner of a business carried on by the use of electric power and electric lights, when the business is interrupted by the breaking of the electric wires, are of increasing importance in every part of the country. When such electric light and power are furnished under contract by an electric company the rights, as against the company, will, of course, be determined by the terms of the contract itself. Doubtless in most instances such contracts contain a stipulation against liability for failure of the supply of electricity on account of accidental interruptions to its transmission. A recent Georgia case of unusual interest decides that when such interruption is caused by the negligent acts of a third party, even though committed in the performance of work done without authority of law and in violation of a city ordinance, the proprietor of the business interrupted by the breaking of the wires has no redress for the damage thus sustained by the negligent and unlawful act. This is the case of Byrd *v.* English (Ga.) 43 S. E. 419, — L. R. A. —. The defendant broke the wires of the electric company by negligence in the excavation of a street. As the court says, "this was done without authority of law and in violation of an ordinance." The result of breaking the wires was that for several hours the plaintiff, who carried on a printing and publishing business, using electricity both for lights and power, was left without the means of conducting his business, and suffered damage. The wires that were broken did not belong to him, but belonged to an electric light company that furnished the light and power under a contract by the terms of which it was not liable for any accidental interruption of the current. Therefore he had no recourse against the electric light company and, unless he could recover from the tort feasor who broke the wires, not only negligently, but in pursuance of illegal work, he had no remedy for the injury to his business. The court denied any relief to the proprietor of the business for the damage caused to it by this wrongful interruption of the light and power. It reached this conclusion on the theory that, as the electricity was furnished under a contract with a third person, who owned the wires that were broken, the case was merely one of preventing the performance of the contract, and, in the language of the headnote by the court, the proposition decided was as follows: "A party to a contract, who is in-injured by reason of the failure of the other party to comply with its terms, cannot recover damages for the negligent act of a third person by which the performance of the contract is rendered impossible." The court says: "If the plaintiff can recover of these defendants upon this cause of action, then a customer of his who was injured by the delay occasioned by the stopping of his work could also recover from them, and one who had been damaged through his delay could in turn hold them liable, and so on

without limit to the number of persons who might recover on account of the injury done to the property of the company owning the conduits. To state such a proposition is to demonstrate its absurdity." While the court expressly says, "The plaintiff is suing on account of an alleged tort by reason of which he was deprived of a supply of electric power with which to operate his printing establishment," it declares that his right to that power supply was "solely the right given him by virtue of his contract," and that the defendants are not even remotely connected with the contract.

The result reached by the reasoning of the court is to deny any remedy against a tort feasor for the negligent and wrongful interruption of a business. It needs cogent reasoning to convince one of the justice of such conclusion. With much deference to the learned court that decided this case, it may be suggested that the reason is unsatisfactory and the result wrong. The court assumes that the damage results entirely by preventing the performance of a contract. This is hardly the case. The contract was in fact fully performed by the electric light company. It did not fail in any particular to perform its contract. Its contract only called for a supply of electricity under ordinary circumstances, and expressly excepted cases of accidental interruptions. It cannot be correctly said, therefore, that the gas company in any degree failed in the performance of its contract. Therefore the damage done to the publishing company was not caused by the nonperformance of the contract. It was directly caused by the independent tort of a third party. The case stands, therefore, as one of damage caused to a business as the direct result of a tort. The contract with the electric light company had nothing to do with the tort or the damage. If there had been no contract, the situation would have been in all essential respects the same. The mere fact that the publishing company did not own the electric wires that were broken did not change the nature of the tort. If there had been no contract, and the electricity had been used merely by gratuitous license, the situation with respect to the tort feasor would not have been different. This tort feasor, by wrongful and negligent act, interrupted a business, and caused damage. Liability ought to follow as a necessary result. If a mill were operated by water drawn from a public river through a race or channel across lands of another party without any contract, but by mere license or acquiescence of the owner of the land, it can hardly be doubted that a tort feasor who broke open the channel and diverted the water, whether he did it maliciously or negligently, would be liable to the mill owner for the damage to the mill by interrupting his business. A tort causing an interruption of, and damage to, a business is actionable, without regard to the ownership of the particular article or thing by which, or through which, the damage was caused. Interruption to a business by unlawfully cutting off access to it is unquestionably actionable, though the tort feasor does not step on or touch the land or any tangible property of the party damaged. Thus, it might be done by wrongfully erecting a barrier in a street which gave the only access to the business, as would be the case where the street was a cul de sac, and the fact that the proprietor of the business did not own the ground where the unlawful act was done would not cut off his remedy against a wrongdoer. This is elementary law. So, where abutting owners are damaged by a railroad embankment in the street, interfering with access to their place of business, they are clearly entitled to damages, though they do not own the fee of the street where the embankment is. This was held in Reining *v.* New York, L. & W. R. Co. 128 N. Y. 157, 14 L. R. A. 133, 28 N. E. 640, and numerous other cases sustain the same doctrine. In short, a clear tort, whether malicious or negligent, which interrupts and damages a lawful business, is, on sound prineiple, actionable without regard to the ownership by the proprietor of the business of the tangible property touched in committing the tort. This proposition seems too plain for dispute. The only real question in the case of Byrd *v.* English seems to be, therefore, whether or not the injury done was a direct injury to the proprietor whose business was interrupted, or merely an injury to property of another person, which affected the proprietor of the business only by causing a breach of contract. It seems plain on the facts that it did not cause any breach of contract. It merely caused an interruption to the business, which the contract expressly excluded from its opera-

tion. The only damage worth considering was that done to the business which was interrupted. It was as direct and immediate to the owner of the business as if the wires that were broken had been owned by him, or had not been owned by anybody. If, therefore, the damage did not result from causing any breach of contract, as the court assumed to be the case, but by a direct injury to the business, caused by interrupting its supply of power, the decision cannot be deemed sound, because it proceeds entirely on the theory that the damages were caused by preventing the performance of the contract, and were, therefore, too remote.

A new precedent that may be applicable to a large and important class of cases needs the most careful consideration. The uses of electric power are undoubtedly destined to increase beyond calculation. Such power is already used to carry on a multitude of business enterprises, and is usually supplied, as was done in the Georgia case, by an electric company which stipulates against liability for accidental interruptions of the current. If tort feasors, negligent or otherwise, can cut off such supply, and thereby interrupt and damage the business operated by it without liability for so doing, the situation is serious and the result anomalous. The Georgia court was forced to this result because of its premise that the damage was caused by a mere prevention of the performance of a contract by a third person. The truth of that premise cannot be admitted.

Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 61, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

ought to follow as a necessary result.

contract expressly excluded from its opera-

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Alteration of Instruments.

An application for insurance, on a single sheet containing at the bottom a promissory note intended to secure assessments, is held, in Rochford *v.* McGee (S. D.) 61 L. R. A. 335, to be a single contract, of which the removal of the note is a material alteration, so that it is void even in the hands of a bona fide holder, although the note is written below a perforated line, if the general appearance of the paper is such that the applicant is not guilty of negligence in signing it.

Animals.

That one bitten by a dog was attempting to climb upon the owner's cart without leave is held, in Peck *v.* Williams (R. I.) 61 L. R. A. 351, not to relieve the owner of liability for the injury, under a statute making the owner of a dog liable, whether or not he knows of its vicious propensity, if it shall bite any person traveling on the highway or out of his inclosure.

Attorney and Client.

A statute giving attorneys a lien on the cause of action for their fees in suits instituted by them is held, in Tompkins *v.* Nashville, C. & St. L. Ry. (Tenn.) 61 L. R. A. 340, not to deprive the plaintiff of the right to dismiss the suit against their will, or entitle them to be made parties with the right to prosecute the action to protect their own interests.

Bastardy.

An unmarried woman who is an imbecile and incompetent to testify is held, in State *ex rel.* Yilek *v.* Jehlik (Kan.) 61 L. R. A. 265, to have no right to institute and prosecute a proceeding in bastardy.

Bills and Notes.

See CONFLICT OF LAWS.

Carriers.

One who pays a brakeman on a passenger train a sum of money to be carried to a certain point, and is told to ride upon the platform of the baggage car, and get off the train at all stops, and keep out of sight, and who follows such instructions, is held, in Mendenhall *v.* Atchison, T. & S. F. R. Co. (Kan.) 61 L. R. A. 120, not to be a passenger.

A passenger going upon a railroad train is held, in Kansas City, Ft. S. & M. R. Co. *v.* Little (Kan.) 61 L. R. A. 122, to have a right to rely upon the representations of a local ticket agent that such train will stop at a certain point to which he has purchased a ticket and desires to ride; and the company is held to be liable if he is compelled to leave the train before reaching his destination, because by the general rules of the company, unknown to the passenger, such train is not scheduled to stop at such station.

Conflict of Laws.

A contract of indorsement of a promissory note is held, in Spies *v.* National City Bank (N. Y.) 61 L. R. A. 193, to be governed by the law of the state where it is made, although the note itself is executed and payable in another state, unless the intention is to negotiate the instrument elsewhere.

Constitutional Law.

A statute which requires municipal corporations to pay more for common labor employed on public improvements than it is worth in the market is held, in Street *v.* Varney Electrical Supply Co. (Ind.) 61 L. R. A. 154, to unconstitutionally deprive the taxpayers of their privileges and immunities, and of their property without due process of law, to interfere with their right of contract, and to be invalid as class legislation.

Contracts.

See also TIME.

Where a contract of employment is made for one year at a stipulated salary per month, an agreement during the term to receive less or to pay more than the contract price is held, in C. H. Davis & Co. *v.* Morgan (Ga.) 61 L. R. A. 148, to be void unless supported by some change in place, hours, character of employment, or other consideration.

A contract by which an insurance company loaning money on the security of a paid-up policy issued by it may, at its option, require a surrender of the policy for its cash value upon default in payment of the loan or interest thereon, is held in New York Life Ins. Co. *v.* Curry (Ky.) 61 L. R. A. 268, to be void.

Copyright.

An author who permits the publication in a magazine of chapters of a book on which he has secured a copyright without any notice other than the general notice by the publishers of the magazine of a copyright of its matter is held, in Mifflin *v.* R. H. White Co. (C. C. App. 1st C.) 61 L. R. A. 134, to lose his exclusive rights under his copyright.

Criminal Law.

The right to challenge a juror for disqualification is held, in Queenan *v.* Oklahoma (Okla.) 61 L. R. A. 324, not to be a constitutional right which cannot be waived, but to be a statutory right which may be waived by defendant or his counsel.

Damages.

In computing the damages for the breach

of a contract to furnish the dresses for the trousseau of a bride of wealth and high social standing, it is held, in Lewis *v.* Holmes (La.) 61 L. R. A. 274, that the court will take into consideration, not alone the disappointment of the bride, and her mortification and humiliation in going to her husband unprovided with a suitable trousseau, but also the fact that entertainments had been planned in her honor on her wedding tour, and at her arrival at the home of her husband, which entertainments she was obliged to forego for want of the dresses.

Eminent Domain.

A corporation authorized to develop and use the water power of a river, and generate electric or other power, light or heat, and utilize, transmit, and distribute it for its own use or the use of other individuals or corporations, is held, in Fallsburg Power & Mfg. Co. *v.* Alexander (Va.) 61 L. R. A. 129, to be for a private, and not for a public, purpose, and therefore not entitled to exercise the right of eminent domain.

Under statutory authority to exercise the right of eminent domain to secure land for a park, it is held, in Laird *v.* Pittsburg (Pa.) 61 L. R. A. 332, that land needed for an addition to a free library building located in a public park may be taken.

Estoppel.

One who has sold his property to a combination, and been placed in possession as agent of the purchaser, is held, in Gilbert *v.* American Surety Co. (C. C. App. 7th C.) 61 L. R. A. 253, to have no right, after years of service under that agreement, to repudiate the contract and reclaim the property on the ground that the contract under which the sale was effected was in restraint of trade.

Executors and Administrators.

An administrator who at the time of his appointment was hopelessly insolvent, and who continued so during all the time of his administration up to and including the time of his final settlement, is held, in *Re* Howell (Neb.) 61 L. R. A. 313, to be entitled to turn over the evidence of his uncollectible debt to his successor or other proper authority, and to be discharged from his official liability therefor.

Garnishment.

See INJUNCTIONS.

Hacks.

A railroad company is held, in Donovan *v.* Pennsylvania Co. (C. C. App. 7th C.) 61 L. R. A. 140, to be entitled to give the exclusive right to solicit patrons within its station to one hackman.

Homicide.

A conviction of manslaughter upon the second trial of an indictment for murder, upon which there was a conviction of manslaughter at the former trial, which was set aside and a new trial granted, is held, in People *v.* McFarlane (Cal.) 61 L. R. A. 245, to be sustainable, although the evidence establishes murder on the second trial, where the evidence does not prove a case where the verdict must be for murder or acquittal as justifiable homicide.

In a prosecution for manslaughter on the ground that deceased was killed unintentionally while the slayer was in the commission of an unlawful act, it is held, in Johnson *v.* State (Ohio) 61 L. R. A. 277, that it must be shown that the alleged unlawful act is prohibited by law.

Husband and Wife.

The giving of a note secured by deed of trust to a husband and wife jointly to secure repayment of a loan, a portion of which was advanced by each, is held, in Johnston *v.* Johnston (Mo.) 61 L. R. A. 166, not to create an estate by entirety, where, by statute, a man has no control of his wife's property.

Injunction.

See also WATERS.

A suit in equity to enjoin a judgment

creditor from prosecuting a multiplicity of proceedings in garnishment to subject exempt wages of laborers, mechanics, and clerks to the payment of his judgment is held, in Siever *v.* Union P. R. Co. (Neb.) 61 L. R. A. 319, to be maintainable.

Insurance.

See also CONTRACTS.

The effect of a mortgage clause in an insurance policy on mortgaged property, making the loss, if any, payable to the mortgagee as his interest may appear, is held, in Delaware Ins. Co. *v.* Greer (C. C. App. 8th C.) 61 L. R. A. 137, to make the mortgagee the simple appointee of the mortgagor, to receive the proceeds of the amount of his interest, and to place his indemnity at the risk of every act and omission of the mortgagor that would avoid, terminate, or affect the insurance of the latter's interest under the terms of the policy.

Under a policy of insurance against injury caused solely by external, violent, and accidental means, which provides that it shall not cover injury resulting from any poison, or from anything accidentally or otherwise taken, administered, absorbed, or inhaled, it is held, in Preferred Acci. Ins. Co. *v.* Robinson (Fla.) 61 L. R. A. 145, that no recovery can be had for injury resulting from inflammation of the eyes in consequence of accidentally coming in contact with poison ivy whereby the irritating poison was absorbed into the eye.

Where property intended to be covered by the policy has been destroyed, and its owner has received from other insurers more than its value, it is held, in Insurance Co. of North America *v.* Schall (Md.) 61 L. R. A. 300, that equity will not compel the issuance of a policy of insurance in accordance with the provisions of a contract to insure.

Good faith on the part of the applicant for insurance in denying the existence of a bodily infirmity is held, in Standard Life & Acci. Ins. Co. *v.* Sale (C. C. App. 6th C.) 61 L. R. A. 337, not to prevent its rendering the policy void, where the policy expressly states that, if a statement of its nonexistence shall be untrue in any respect, the policy shall be null and void.

Intoxicating Liquor.

The legislature is held, in Farmville *v.* Walker (Va.) 61 L. R. A. 125, to have a right to permit a town to establish a dispensary for the exclusive sale of ardent spirits, although in so doing it may render necessary the expenditure of money, and ultimately the imposition of a tax.

A municipal corporation having by charter exclusive power to "control and direct" the sale of liquors within its limits is held, in Lofton *v.* Collins (Ga.) 61 L. R. A. 150, to have no authority to organize a dispensary by appointing commissioners and authorizing them to sell liquors under certain terms and conditions prescribed in an ordinance.

Landlord and Tenant.

The owner of the building required by statute to be provided with fire escapes is held, in Carrigan *v.* Stillwell (Me.) 61 L. R. A. 163, not to be relieved from liability for their absence by the fact that the building was in possession of a tenant, where the statute requires notice to be given to him in case they are found to be unsafe, and imposes a penalty upon him for neglect to comply with recommendations in regard to them.

The construction of a roundhouse for the housing of engines, and leasing it for that purpose, are held, in Louisville & N. Terminal Co. *v.* Jacobs (Tenn.) 61 L. R. A. 188, not to render the owner liable for a nuisance created by the manner in which it is used, if improper, and not ordinary, use of it is necessary to make it a nuisance.

Master and Servant.

See also STREET RAILWAYS.

Failure of loaders to perform their duty and remove loose coal hanging in a mine, which renders the place unsafe for other employees to work in, is held, in Tradewater Coal Co. *v.* Johnson (Ky.) 61 L. R. A. 161, to be the negligence of the master, and not of the fellow servant of a machine man's helper.

Negligence.

A manufacturer who, without giving no-

tice of its dangerous character, supplies to another a machine which at the time of delivery he knows to be imminently dangerous to the life or limbs of anyone using it for the purpose for which it is intended, is held, in Huset *v.* J. I. Case Threshing Mach. Co. (C. C. App. 8th C.) 61 L. R. A. 303, to be liable to an employee of the vendee who sustains injury from its dangerous condition.

Nuisance.

See also LANDLORD AND TENANT.

A judgment for plaintiff in an action to remove from his land a permanent wall erected by defendant, which cannot be removed by legal process, in which action the plaintiff asks only for the relief appropriate in a legal action to recover real property, is held, in Hahl *v.* Sugo (N. Y.) 61 L. R. A. 226, to be a bar to a subsequent suit in equity to compel the removal of the wall under statutes establishing one form of action, and requiring the complaint to state the facts constituting the cause of action, and demand the judgment to which plaintiff supposes himself entitled.

Principal and Agent.

Wherever one person is placed in such a relation to another by the act or consent of such other, or of a third person, or of the law, that he becomes interested for him, or with him, in any subject of property or business, he is held, in Trice *v.* Comstock (C. C. App. 8th C.) 61 L. R. A. 176, to be in such a fiduciary relation with him that he is prohibited from acquiring rights in that subject antagonistic to the person with whose interests he has become associated.

Public Improvements.

See also SCHOOLS.

An appropriation of public money by the legislature to redeem warrants issued under an invalid law providing for the treatment of inebriates at public expense, which are in the hands of innocent purchasers, is held, in State *ex rel.* Garrett *v.* Froehlich (Wis.) 61 L. R. A. 345, to be unauthorized, as being for a private, and not for a public, purpose.

Public Lands.

Land in possession of persons prospecting for oil thereon with the intention of locating it as mineral land is held, in Cosmos Exploration Co. *v.* Gray Eagle Oil Co. (C. C. App. 9th C.) 61 L. R. A. 230, not to be vacant and open to settlement, within the meaning of an act of Congress permitting the exchange thereof for land within a forest reserve, although no oil or mineral is known to exist therein, and no claim thereto appears on the records of the Land Office.

Schools.

Public property owned by a sub school district, and used exclusively for purposes of public education, is held, in Pittsburg *v.* Sterrett Subdistrict School (Pa.) 61 L. R. A. 183, not to be subject to local assessment for a municipal improvement, where the statute does not expressly make it so, but provides for the collection of such assessments by sale of the property.

Street Railways.

A chartered street railroad is held, in Savannah, T. & I. of H. R. Co. *v.* Williams (Ga.) 61 L. R. A. 249, to be a "railroad company," within the meaning of a statute making railroad companies liable to one servant for injuries inflicted by the negligence of a fellow servant.

Time.

A subscription contract to pay money for the cost of a railroad in consideration of its equipment and the running of trains on or before a specified date is held, in Garrison *v.* Cooke (Tex.) 61 L. R. A. 342, not to be enforceable if the road is not completed by the time specified, since time is of the essence of the contract.

Trusts.

A trustee for holders of bonds secured by a railroad mortgage is held, in Reed *v.*

Schmidt (Ky.) 61 L. R. A. 270, to have no right to create a pool for the purpose of buying in property for the exclusive benefit of a favored and chosen number of bondholders, but it is held that all must be given a fair opportunity to share on equal terms.

Where a trustee under a will, in disregard of the testator's directions, used trust funds in her hands, together with her own funds, to buy real estate, and took the title in her own name, it is held, in Bohle *v.* Hasselbroch (N. J. Eq.) 61 L. R. A. 323, that the *cestuis que trust* are entitled, in equity to elect whether they will claim a charge upon the real estate for the amount of trust funds so invested, or will claim the real estate itself, as owners, subject to a charge for the trustee's own money so used.

Waters.

An ordinance for the protection of waterworks, which requires all consumers using large service pipes to provide meters, while giving other consumers an option to do so, is held, in State *ex rel.* Hallauer *v.* Gosnell (Wis.) 61 L. R. A. 33, not to be void for unreasonableness.

Where a city determines that the public welfare will be best subserved by removing to another portion of the city a large amount of water mains upon which there are seventeen fire hydrants maintained at public expense, and where there is no demand for fire protection and but one private consumer, it is held, in Asher *v.* Hutchinson Water, Light & P. Co. (Kan.) 61 L. R. A. 52, that an injunction will not lie at the suit of such private consumer to restrain the removal of such mains, notwithstanding the removal thereof would render his property practically valueless for the purpose for which it was improved.

Where a small strip of land which lies between a government grant and a river is washed away so that the granted land becomes riparian, and then accretions to the granted land carry the river boundary far beyond its old location, it is held, in Widdecombe *v.* Chiles (Mo.) 61 L. R. A. 309, that the accretions will belong to the grantee, and that no title will vest in the government which it can grant to a third person.

Wills.

See also TRUSTS.

The destruction of a will expressly revoking a former one, is held, in Stetson *v.* Stetson (Ill.) 61 L. R. A. 258, to revive the earlier, under a statute providing that a will can be revoked only by a subsequent will declaring the revocation of former ones.

New Books.

"The Courts of New Jersey." Their Origin, Composition, and Jurisdiction. By William M. Clevenger. Also some Account of Their Origin and Jurisdiction by Edward Q. Keasbey. (The New Jersey Law Journal Pub. Co., Plainfield, N. J.) 1 Vol. $2.

"Stephen's Commentaries on the Laws of England." 14th Ed. (Butterworth & Co., 12 Bell Yard, Temple Bar, London, W. C.) 4 Vols. Cloth, £4 4s. Half Calf, 10s 6d extra. Half Morocco, 17s 6d extra.

"Education Acts." By Barlow & Macan. 2d Revised Edition. Including London Education Act 1903. (Butterworth & Co.) 1 Vol. 3s 6d.

"Blackwell's Law of Meetings." 3d Ed. (Butterworth & Co.) 1 Vol. 2s 6d.

"The Yearly Supreme Court Practice, 1904." (Butterworth & Co.) 1 Vol. 20s.

"Selected Cases on Code Pleading and Practice in New York." By Henry S. Redfield. (The Banks Law Pub. Co., New York.) 1 Vol. $6.

"New York Transfer Tax Law." By Samuel T. Carter. (The Banks Law Pub. Co.) 1 Vol. $3.

"Manual for Supervisors, Assessors, and Other Town Officers." By George C. Morehouse. (H. B. Parsons, Albany. N. Y.) 1 Vol. $5.

"Bender's National Lawyers' Diary for 1904." (Matthew Bender, Albany, N. Y.) 1 Vol. $1.50.

"Dunnell's Digest of Law Procedure in Minnesota." (West Pub. Co., St. Paul, Minn.) 1 Vol. $9.00.

"A Treatise on the Law of Negligence." Rules, Decisions, Opinions. By Edward B. Thomas. 2d Ed. (The L. C. P. Co., Rochester, N. Y.) 2 Vols. $12.

"Rumsey's Pratice." Vol. 2 of New Edition. (The L. C. P. Co.) 3 Vols. $18.

"Mississippi Reports." Vol. 81. (The L. C. P. Co.) $4.50 Delivered.

"Supplement to U. S. Compiled Statutes, 1901." (The L. C. P. Co.) 1 Vol. $4.

"Digest of the Hawaiian Reports, 1903." (The L. C. P. Co.) 1 Vol. $7.50.

"Collateral Inheritance and Transfer Tax Law of New York State." Together with Forms and Table of Cases. By Edward H. Fallows and George M. Judd. (The L. C. P. Co., 79 Nassau Street, New York) 1 Vol. $3.50.

"Decisions of the Supreme Court of Idaho." (The Bancroft-Whitney Co., San Francisco, Cal.) Vol. 1, $5.25. Vols. 2, 3, 4, 5, 6, 7, $4.25.

"Mahan's Supplement to Ballinger's Codes and Statutes of Washington." (Bancroft-Whitney Co.) 1 Vol. $6.

"The Official Code of Laws of the State of Idaho." Political Code, 1901. Civil Code, 1901. Code of Civil Procedure, 1901. Penal Code, 1901. (Bancroft-Whitney Co.) 4 Vols. $17.50. Sold only in complete sets.

"Codes and Statutes of California, 1903." Civil Code, Code of Civil Procedure, Penal Code, Political Code, and General Laws. (Bancroft-Whitney Co.) 5 Vols. $4.00 each.

"Kinkead's Commentaries on the Law of Torts." (Bancroft-Whitney Co.) 2 Vols. $12.00.

Recent Articles in Law Journals and Reviews.

"Mechanics' Liens in Virginia."—9 Virginia Law Register, 369.

"Subsequent Birth of Children as a Revocation of a Will."—9 Virginia Law Register, 473.

"Right of an Adult Child to Recover for Services Rendered to a Parent."—57 Central Law Journal, 323.

"Time when the Statute of Limitations Begins to Run against the Widow's Right of Dower."—57 Central Law Journal, 326.

"The Exigencies of Eminent Domain (No. 2)."—65 Albany Law Journal, 299.

"Divisibility of the Contract of Fire Insurance,"—65 Albany Law Journal, 307.

"The Law and the Mob Spirit."—65 Albany Law Journal, 314.

"The Present Status of the Defence of Want of Mutuality in Specific Performance."—42 American Law Register, N. S. 591.

"Contributory Negligence as an Offset against Fraud."—57 Central Law Journal, 303.

"Is Alcohol an Intoxicating Liquor?"—57 Central Law Journal, 308.

"The Constitutionality, Operation, and Effect of Laws Taxing Franchises, and Especially the Georgia Franchise Tax Act."—11 American Lawyer, 384.

"Due Process of Law."—11 American Lawyer, 388.

"State Control of Trusts."—18 Political Science Quarterly, 462.

"Two New Southern Constitutions."—18 Political Science Quarterly, 480.

"Damages by Flood."—57 Central Law Journal, 268.

"Validity of Marriages Celebrated in a State or Country where Laws or Customs Favor Polygamy or Divorce at Will."—57 Central Law Journal, 268.

The Humorous Side.

THE COURT OBJECTS.—The function of an objection in a legal proceeding seems to have been especially puzzling to an Iowa justice of the peace. A judgment for costs was rendered against him upon the reversal in certiorari proceedings of an unauthorized judgment that he had rendered after failing to enter certain objections on his docket. Realizing more than he had ever before done the importance of an objection, he disposed of a motion to quash an information in a criminal proceeding by the following entry on his docket: "Now at 10 A. M. defendant appears and files a motion to quash information. The motion is sustained and the court objects. The case is set for next Monday at 9 o'clock."

A DARKEY BOY'S OATH.—A small colored boy was recently called as a witness in a criminal case in Washington, and, some doubt being entertained as to his competency to testify on account of his age, he was asked what was the meaning of an oath, and he replied that it meant he would have to "tell what he took." On being further asked what would become of him when he died, if he did not tell the truth on the witness stand, he answered that "he would be buried."